HIGH COURT OF UTTARANCHAL AT NAINITAL

C-482 NO. 237 OF 2005

Sanjay Kumar,
S/o Sri Narayan Ram Arya,
R/o Final year student Boys Hoster,
King Jorg Medical College.
Lucknow or Permanent R/o Village Jakhani,
Near Indian Oil,
Pithoragarh, District-Pithoragarh,
.....Applicants.

Vs.

1. State of Uttaranchal, through Home, Secretary Uttaranchal, Dehradun.
2. Dr. Smt. Nisha Rani, W/o Sri Sanjay Kumar, R/o Mumtaz Bhawan, Gopaldhara, Almora, Tehsil and District-Almora. .....Opposite Parties.

Hon'ble Rajesh Tandon, J.

Heard Vinod Sharma, counsel for the applicant and A.G.A. for the State.

2. By the present application filed under section 482 of the Code of Criminal Procedure, applicant has prayed for quashing the criminal proceedings initiated in Case Crime No. 659 of 2004 *Dr. Smt. Nisharani V. Sanjay Kumar* under Section 498-A, 506 Indian Penal Code.

3. Briefly stated, a complaint was filed before the Chief Judicial Magistrate Almora stating therein that the

opposite party no. 2 was married with the applicant on 18th November, 2002 and after the marriage, there was a demand of dowry. Further it has been stated that Sri Sanjay Kumar is not a Doctor and he has falsely shown himself to be a Doctor. On filing such complaint, notices were issued summoning the applicant Sanjay Kumar alone. Against the aforesaid summoning order, present application under Section 482 of the Code of Criminal Procedure has been filed.

4. In ***Medchl Chemicals and Pharma (P) Ltd. v. Biological E. Ltd. and others (2003) 3 SCC 269,*** the Apex Court has been observed as under:

> *"19. Considering the factual aspect of the matter, we unhesitatingly state, however, that the issue involved in the matter under consideration is not a case in which the criminal trial should have been short-circuited. We, thus, without expressing any opinion on the merits of the case allow the appeal and set aside the impugned order of the high Court and restore the complaint. The learned trial Magistrate shall proceed with the complaint and dispose of the same in accordance with the law with utmost expedition. Be it clarified however that observations as above in this judgment be not taken as an expression of any opinion of ours."*

5. Since it is a complaint case, therefore, it is relevant to quote following portion from the order in

Smt. Husna and others v. State of U.P. and others [2006 (56) ACC 659]:

> *"7. The petition is finally disposed of with the direction to the petitioners to appear before the Court concerned within 15 days of passing of this order and if they do so, the Court will permit them to file appearance bonds to his satisfaction for their regular appearance in the case."*

6. I find no infirmity in the order so as to interfere with the merits of the case in order to short circuit the trial. However, in case the petitioner appears before the Chief Judicial Magistrate, Almora, he shall be released on furnishing the appearance bond before the Chief Judicial Magistrate, Almora.

7. In view of the aforesaid, no interference is required under Article 482 of the Code of Criminal Procedure.

8. Subject to aforesaid with regard to the fulfilling of the bonds, application under Section 482 of the Code of Criminal Procedure lacks merit and is dismissed.

(Rajesh Tandon, J.)

8.12.2006

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